



## 9.11 FINANCIAL RESPONSIBILITY

The purpose of financial responsibility (FR) is to ensure that hazardous waste facilities owners or operators have adequate financial resources, insurance, cash, or other financial mechanisms to close the facility, and respond to any third party liability claims that may arise from sudden or non-sudden accidents at the facility. FR requirements apply to owners and operators of all hazardous waste facilities except state or federally owned or operated facilities. FR does apply to city and county owned or operated facilities.

The Statewide Compliance Branch (SCB) of each regional office has a FR analyst assigned to review and approve financial documents. The FR analyst reviews all documents for compliance with the FR regulations and maintain the FR files. Negotiable FR instruments are maintained at headquarters.

The permit writer is responsible for:

1. checking and approving the applicant's closure cost estimate;
2. submitting the checked and approved estimate to the regional office FR analyst;
3. assisting the FR analyst to resolve any FR problems or questions; and
4. providing the FR analyst with all financial instruments when they come into the regional office.

The closure cost estimate provided to the FR analyst is the estimate for the closure of entire facility, not a unit estimate.

FR reviews are only valid for 60 days. Therefore, a minimum of two FR reviews are typically required. The first review should be requested after the permit writer has approved the facility's closure estimate. The second review should be requested 20 days prior to the public notice period. A Third FR review may be needed if it takes more than 60 days from the date of the second FR review to issue the final permit.

In checking a facility's closure and post-closure cost estimates, the estimates must be sufficient to achieve the closure standard specified in Title 22, Cal. Code of Regs., section 66264.142 (Cost Estimate for Closure and section 66264.197 (Closure and Post-Closure of tank systems). Estimated Corrective Action costs associated with corrective action permit conditions (Part V, Corrective Action, of the new permit format) must be included in the facility's closure cost estimate and should not be submitted for financial responsibility review as a separate corrective action cost estimate. Financial assurance for corrective action, which is included in the closure cost estimate, is released by the permit writer as corrective action progresses.

### Basic Steps for FR Reviews

**Submission of Information to FR Analyst.** The permit writer must follow the cost estimating instructions, worksheets, and checklists included in [Chapter 9.9](#) (Closure Plan) that provide:

1. copies of cost estimating calculations;
2. identification of the source of the calculation provided;
3. a completed Financial Responsibility Review Request form FR-1(8/89)(Appendix 9.11-1) to the regional office FR analyst.

This request to the FR analyst must occur as soon as the cost estimating calculations, worksheets, and checklists are completed. If the permit writer omits any information, the form will be returned as unacceptable, which will delay the review findings. The permit senior must approve (by initials in the upper right-hand corner) the request form FR-1 (8/94) before it is submitted to the FR analyst. The FR

analyst will contact the facility directly if there are questions about submitted FR instruments.

Receive Results of FR Review from FR Analyst. The FR analyst will review all FR instruments to ensure they meet all FR requirements and complete the Financial Responsibility Review Findings form FR-2 (8/94) (Appendix 9.11-2). This form reports whether the facility passed or failed the financial review and notes any deficiencies found during the review. The FR analyst may attach supporting documentation to the form. The permit writer must include such deficiencies in the Notice of Deficiency to be sent to the applicant at the conclusion of the Phase I Technical Review. The permit writer should have the FR analyst check the FR NOD statements to make sure they clearly explain what needs to be resubmitted to meet all FR requirements. A copy of the NOD must be sent to FR analyst.

### Basic Steps for Releasing the Facility from Financial Responsibility Requirements

Request by Facility. DTSC may only release FR instruments in response to a formal, written request that clearly states the nature of the request and gives DTSC instructions on what to do with the FR instrument once DTSC determines the request can be fulfilled and the instrument released. This letter is usually referred to as a "Letter of Instruction." It is recommended that this letter be submitted to DTSC at least 21 calendar days prior to the date the FR instrument will be released. The regulations (Title 22, Cal. Code of Regs., section 66264.143(j) and 66264.145(j) allow DTSC 60 days from the time it determines the submitted certifications to be acceptable to release FR instruments. Since there is a significant cost to the facility for maintaining the required levels of FR assurance, DTSC will endeavor to release instruments as quickly as workload permits, following acceptance of required certifications.

Submission of Information to FR coordinator. At least 14 days prior to final approval (Branch Chief's signature) of a permit modification, closure certification or ownership change, the permit writer must submit a completed Financial Responsibility Review Request form FR-1 (8/99) to the regional office FR analyst. The permit senior must approve the request form before it is submitted to the FR analyst.

Receive Results of FR Review from FR Analyst. The FR analyst will perform a FR review of FR instruments on file to ensure they meet all FR requirements and complete a Report of Financial Responsibility Review for FR-2 (8/89). This form reports whether the facility passed or failed the FR and will note any problems, or potential problems, with the release of the requested FR mechanism.

Problem Resolution and Approval Letter. The permit writer and FR coordinator must work with the facility to resolve any problems found during the FR review. Once all problems have been resolved to the satisfaction of the FR analyst, the permit writer may prepare an approval letter to the facility notifying them that its request has been approved.

Required Statements. All approval letters for permit modifications, closure certifications, or ownership changes must contain a statement explaining what will occur with associated FR instruments.

Approved Permit Modification - The letter must address that the financial mechanism currently displayed is over funded, adequately funded, or inadequately funded.

1. Over Funded - the approval letter must state: "DTSC has recently completed a review of your financial assurance mechanism and it was determined that the mechanism is over funded. Please submit to the Statewide Compliance Division Chief of this office instructions what action the facility wishes to take in regards to the extra funds."
2. Adequately Funded - the approval letter must state: "DTSC has recently completed a review of your financial assurance mechanism and it was determined that the mechanism is adequate and therefore no action is required at this time by the facility."

3. Inadequately Funded - the approval letter must state: "DTSC has recently completed a review of your financial assurance mechanism and it was determined that the mechanism is inadequately funded. You must provide adequate financial assurance within 30 days of receipt of the approved permit modification from DTSC. Please submit any and all financial assurance documents to the Statewide Compliance Division Chief of this office."

Approved Closure Certification - The letter must address: that the financial mechanism currently on file with the department for closure is no longer required, whether there are any identified problems found in the FR review that would affect the release of the mechanism, and that the facility must submit to the Statewide Compliance Branch Chief of the regional office issuing the letter instructions on to whom and where the released FR documents must be sent. The approval letter must state: "DTSC has certified your facility as closed, therefore your financial assurance mechanism is no longer required. (Insert any comments here that the facility must be aware of to receive their financial documents. This may not pertain to all facilities.) Please submit a letter to the Statewide Compliance Branch Chief of this office, with instructions to whom and where the financial assurance documents should be sent."

Approved Ownership Change - The letter must address that the financial mechanism currently on file with DTSC for closure is either required until the new owner provides adequate FR assurance to DTSC or no longer required.

1. Financial Assurance No Longer Required - The approval letter must state: "DTSC has approved the ownership change and the new owner of the facility is currently demonstrating financial assurance for the facility. Therefore, you are no longer required to demonstrate financial assurance for the facility. Please submit a letter to the Statewide Compliance Branch Chief with instructions to whom and where the financial assurance document should be sent."

2. Financial Assurance Required - The approval letter must state: "DTSC has approved the ownership change but the new owner has not demonstrated financial assurance for the facility. Therefore, you are not released from financial assurance on this facility. When the new owner successfully demonstrates financial assurance you will be notified and requested to submit a letter to the Statewide Compliance Branch Chief with instructions to whom and where the financial assurance document should be sent."

The regional office FR analyst must receive a copy of the approval letter and once the letter is received will send the information to DTSC headquarters to release the FR instrument.

## KEY QUESTIONS

Have the closure and post-closure cost estimates been checked through independent calculation and determined to be sufficient to cover all future anticipated costs of closing and maintaining the facility?

Are amounts offered in the FR instruments submitted adequate to cover the costs calculated above?

Is another FR review needed before a final permit determination is made?

## REQUIRED OUTPUTS

### FR Reviews

1. Completed review of all closure and post-closure cost estimates.
2. Completed submission of Financial Responsibility Review Request form FR-1 (8/89) and supporting

calculations, worksheets, and checklists to the FR coordinator.

3. FR review by FR coordinator and return to the permit writer a completed Financial Responsibility Review Findings, with list of deficiencies if appropriate.

4. Draft Permit NOD statements, if required.

### Releasing the Facility from Financial Responsibility Requirements

1. DTSC receipt of Letter of Instructions from facility.

2. Completed submission of Financial Responsibility Review Request form with supporting information submitted to the FR analyst.

3. FR review by FR analyst and return to the permit writer a completed Financial Responsibility Review Findings, indicating any problems or potential problems with releasing the FR mechanism.

4. Resolution of any problems noted by the FR analyst.

5. Letter of approval sent to the facility. Approvals for permit modifications, closure certifications, or ownership changes must contain one of the above statements.

## APPLICABLE REGULATIONS AND STATUTES

### State Laws and Regulations

Title 22, Cal. Code of Regs., Div. 4.5

Chapter 14 Permitted Facilities

Chapter 15 Interim Status Facilities

Table 9.11-1 summarizes state FR requirements.

Cal. H&S Code

Sections

Article 12 Financial Responsibility and Closure and Maintenance of Facilities

Sections

25245 Requires DTSC to adopt financial responsibility regulations

25245.4 Special exemption for generators who treat waste

25245.5 Special exemption for persons treating waste under permit-by-rule

25246 Requires the submission of closure and post-closure plans

25247 Requires DTSC to approve the plan if it meets requirements

25248 Requires operators to carry out an approved plan

25249 Requires certain persons subject to the Water Code to comply with Article 12 requirements

### Federal Laws and Regulations:

For completeness and general information, Table 9.11-2 summarizes the parallel federal requirements.

#### Other Laws and Regulations:

### POLICIES

#### DTSC Policies:

DTSC Policy and Procedure No. 88-11, dated 11/23/88 is out of date. Please disregard this policy.

DTSC Management Memo #92-HWH 12, dated 12/24/93, Confidentiality of Financial Responsibility Documents. This memo establishes that all financial responsibility documents must be made available to the public, except those documents which fall under a specific exemption in the Public Records Act or for which a claim of confidentiality has been properly asserted. (Appendix 9.11-2)

DTSC Management Memo #87-005, dated 12/17/87, Financial Responsibility Permit Reviews and Permit Conditions. This memo is out of date and contains outdated information, which should be disregarded. However, this is the Management Memo that first required a financial assurance determination to be made no more than 60 days prior to the date the final permit is signed. (Appendix 9.11-3)

DTSC Management Memo #: EO-93-018-MM, dated October 25, 1993, Financial Responsibility Staff Role. This memo establishes statewide consistent approach regarding duties associated with enforcement actions, compliance activities and permit compliance activities.

WP File Name: 3/CH09A11P.MAN

List of Examples:

List of Appendices:

9.11-1, Financial Responsibility Review Form, SEB/FR1 (3/93)

9.11-2, Management Memo #92-HWM 12, Confidentiality of Financial Responsibility Documents

9.11-3, Management Memo #87-005, Financial Responsibility Reviews and Permit Conditions

9.11-4, Management Memo #: EO-93-018-MM, Financial Responsibility Staff Role.

List of References:

List of Tables: